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LT. GOVERNOR

ROBERT C. HAAS  
SECRETARY

*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety*  
*Fire Safety Commission*

*Automatic Sprinkler Appeals Board*

*P.O. Box 1025 ~ State Road*

*Stow, Massachusetts 01775*

*(978) 567-3181 Fax: (978) 567-3121*

MAURICE M. PILETTE  
CHAIRMAN

PAUL DONGA  
VICE CHAIR

**Docket # 2005-71**  
**176 Garden Street**  
**Feeding Hills (Agawam), MA**

**AUTOMATIC SPRINKLER APPEALS BOARD**  
**DECISION AND ORDER**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Agawam Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Springfield Turnverein (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 176 Garden Street, Feeding Hills (Agawam), MA.

**B) Procedural History**

By written notice dated June 20, 2005, the City of Agawam Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at 176 Garden Street, Feeding Hills (Agawam), MA. The Appellant filed an appeal of said order on July 15, 2005. The Board held a hearing relative to this appeal on February 8, 2006, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Theodore Beck, President and Kenneth D. Conner, Building Committee Chair. Fire Inspector Michael R. Mercadante represented the Agawam Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Vice Chair, Alexander MacLeod, Peter Gibbons, and John J. Mahan. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the enforcement action of the Agawam Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Written Statement in Support of Application for Appeal
3. Order of Notice of Agawam Fire Department
4. Drawing of Springfield Turnverein
5. AssessPro Information regarding Springfield Turnverein buildings
6. Brochure of The Springfield Turnverein, Inc.
7. Springfield Turnverein, Inc. National Directory Information
8. 1<sup>st</sup> Notice of Hearing to Springfield Turnverein
9. 1<sup>st</sup> Notice of Hearing to Agawam Fire Department
10. 2<sup>nd</sup> Notice of Hearing to Springfield Turnverein
11. 2<sup>nd</sup> Notice of Hearing to Agawam Fire Department
12. Certificate of Inspection (3 pages)
13. Agawam Fire Department Brief
  - a. Agawam Fire Department Narrative of Issues
  - b. Springfield Republican Article dated January 14, 2004
  - c. Agawam Inspectional Services letter dated January 28, 2004
  - d. Picture of Halloween Party at Springfield Turnverein
  - e. Advertisement for Springfield Turnverein
  - f. Springfield Turnverein Letter to Building Inspector dated February 18, 2004

**E) Subsidiary Findings of Fact**

- 1) By Notice dated June 20, 2005, the Agawam Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 176 Garden Street, Feeding Hills (Agawam), MA in accordance with the provisions of M.G.L. c. 148, s.26G1/2.
- 2) The appellant, The Springfield Turnverein, Inc. operates a facility that consists of two separate public assembly portions connected by a common foyer. The largest portion, consisting of approximately 4,500 s.f., known as Sievers Memorial Hall is a gymnasium type building constructed of concrete block covered with hardwood flooring. Below this gymnasium is a lower level, which contains four bowling alleys. The gymnasium/function hall area is connected by a foyer and entrance hallway to another smaller function hall and bar area containing approximately 2,100 s.f. This area features a full bar, with bar seating and tables and chairs.
- 3) The Certificate of Inspection issued for this facility by the Agawam Building Department on January 1, 2006, does not indicate a use group classification. However, the Certificate indicates that the gymnasium's occupancy can fluctuate from 136 people (for children's dance with entertainment, or for an event without entertainment), 200 people (with no entertainment), or 300 people (for bingo). The smaller function hall/bar area has an occupancy of 100 people. The area or level containing the bowling alley has a listed occupancy of 45 people.

- 4) A brochure, which advertises the organizations activities, indicates that both the large and smaller function hall are “available for private parties such as bridal shower, wedding receptions and conferences”. It indicates that the larger hall can accommodate up to 300 people.
- 5) The Appellant testified that the typical hours of operation of the facility are 4 p.m. to 12 a.m., Monday through Friday, and 2 p.m. to 12 a.m. on weekends. During special events, hours of operation may be extended until 1:00 a.m. The Appellant noted that the facility has an entertainment/amusement license as well as a full service liquor license and that a 2 a.m. closing is marked on the license
- 6) In support of their appeal, the representatives for the Appellant testified that the larger function area or gymnasium is used primarily for a wide variety of physical fitness activities, including gymnastics for kids and Tai Chi for adults. However, according to testimony, approximately 128 social events occurred in this establishment during the past year. Such events included: Birthday parties, christenings, Jack and Jill parties, anniversaries, promotions, showers, graduations, etc, in addition to four dinner dance events held for its members and guests. The Appellant testified that all outside rental events are controlled through pre-sold tickets. There is always a manager on duty during an event and that all liquor sales are privately controlled. Other events held at the facility also included fundraisers such as talent shows, pancake breakfasts, and mother’s brunches. Appellant testified that most of the 128 social events were held in the smaller lower level function hall/bar area. Appellant indicated that most of the events involve private dining events where food is the main attraction. However, events featuring music by DJ or live band without a full meal do occur on a regular basis in this smaller function room which has a small dance floor and lighting which is capable of being reduced or dimmed. This area, known as Astaldi Hall, is also used from 4:00 pm until midnight on a regular basis as a full service bar/lounge by members and their guests.
- 7) In support of the Agawam Fire Department’s position, Inspector Mercadante indicated that the facility hosts many dances for children and teenagers. At least on one occasion, it was noted that so many children attended the dance that there was a line spilling out into the entrance foyer. Inspector Mercadante voiced his concern that in the case of a fire, or some other emergency, this crowding situation could impede the evacuation of the facility.
- 8) The Appellant contends that his building is not used as a nightclub, bar, dancehall, or discothèque, or for similar entertainment purposes, though they concede that adult dances and children’s dances do have live or recorded entertainment. He indicated that the bar/member’s lounge area is off limits to all children and that the bar area is for members and their guests and for people who are attending functions. He further pointed out that there does exist a temporary wall in the bar/lounge area that helps to separate the bar from the small function room.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate

system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.

- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes. However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6<sup>th</sup> Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, by the following factors:
  - a) No theatrical stage accessories other than raised platform;
  - b) Low lighting levels;
  - c) Entertainment by a live band or recorded music generating above-normal sound levels;
  - d) Later-than-average operating hours;
  - e) Tables and seating arranged or positioned so as to create ill defined aisles;
  - f) A specific area designated for dancing;
  - g) Service facilities primarily for alcoholic beverages with limited food service; and
  - h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 4) In accordance with the Town’s certificate of inspection and based upon a description of activities which occur within this facility, this building is a place of assembly with a capacity of 100 persons or more. Both areas or portions of this building used for public assembly and function each has a capacity of 100 persons or more.

- 5) This facility, is used for a very wide variety of different uses relating to the recreational, instructional, educational and social purposes of the organization. Most of these activities, the social activities in particular, occur in either the larger gymnasium/function area or the lower function hall/bar area.
- 6) The lower function hall/bar area, has a legal capacity of 100 persons and has a dual purpose of serving as the club's bar and lounge area and as a forum for a variety of social activities. This room is regularly and routinely used as a bar for members, their guests or for persons who rent the facility. The bar serves all types of liquor on a regular basis (Thursday, Friday and Saturday) from 4:00 pm to 12:00 midnight. It has a full liquor license and is legally capable of remaining open until 2:00 a.m. This lower function hall also hosts a significant number of social functions that feature many of the "A-2 like" characteristics that this board has determined to be typical of a nightclub or dance hall. Many of such activities that occur are not classified as private dining events that feature a meal as the main attraction. Therefore, this lower hall and bar portion of this facility is clearly routinely and regularly used as both a "bar" within the meaning of the statute and a function hall that features A-2 like characteristics.
- 7) The larger gymnasium and function hall portion of this building is likewise used for a wide variety of events. The majority of these events consist of sport and gymnastics activities, Boy Scout meetings and cultural supper events. Most of these events are clearly not the type of activities within the scope of s. 26G1/2. However there are a significant number of events in this room that have musical entertainment for dancing purposes. However it appears that many of these events are classified as organized private dining events that feature a meal as the main attraction. Such "organized private dining events", by their very nature, have pre-arranged limitations on attendance and seating because a meal is being prepared and served. They tend to have a fixed starting and ending times and do not have later than average operating hours. Whether the meal is buffet style or sit-down, each guest has a chair and a table to sit down and eat. Although there may be dancing to live or recorded music during some portion of the event, the entertainment is not the main feature of the event. The dancing activity is limited to those persons who are attending for the purposes of eating a meal. In such situations the occupant load is not typically concentrated or crowded.
- 8) Notwithstanding the incidental appearance of live or recorded music for dancing purposes, this board has concluded in prior decisions that under certain circumstances, a portion of a place of assembly which provides facilities for organized private dining events may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s.26G1/2. The existence of the certain characteristics of such dining events is distinguishable from the "A-2 like" characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics are as follows:
  1. The facility is used for events that feature a meal as the primary attraction.
  2. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
  3. Each event has a definite starting and ending time.

4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
5. There are no significantly low lighting levels, and
6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (6<sup>th</sup> Edition), table: 780 CMR 1008.1.2.
7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s.26G1/2, 4<sup>th</sup> paragraph, such a facility may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector. The issuance of such a permit is a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety.

- 9) The board concludes that the majority of social activities within this larger gymnasium/hall that feature “A-2 like” activities, such as music and dancing, are considered “privately organized dining events” which feature a meal as the primary attraction. Accordingly, this larger gymnasium/function area, as currently used is not subject to the sprinkler requirements of s. 26G1/2 as long as the characteristics stated in paragraph F), 8) 1 through 7 are met for all events that feature music or entertainment. With respect to the remaining rare occasions that occur in this larger hall that feature “A-2 like” characteristics but do not feature a meal as the main attraction (Appellant states that there are no more than four per year), a temporary permit shall be required, after 11-15-07, from the head of the fire department who may set the terms and conditions of said permit.

#### **G) Decision and Order**

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the Order of the Agawam Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2. The Appellant shall install an “adequate system of automatic sprinklers” as defined in said s.26G1/2 in the smaller, lower level function hall/bar area, including all rooms, lobbies and other spaces connected thereto and in all kitchen areas.

Such sprinkler system is not required in the larger gymnasium/function area or in the lower level of said gymnasium, which includes the bowling alley area. This determination is conditioned upon the Appellant's continued use of this portion of the building in accordance with the conditions stated in paragraph F) 8), 1 through 7 whenever "A-2 like" activities take place in said larger function area or unless a permit is acquired from the head of the Fire Department.

**H) Vote of the Board**

Maurice Pilette, (Chairperson)	In favor
Paul Donga (Vice Chair)	In favor
Alexander MacLeod	In favor
Peter E. Gibbons	In favor
John J. Mahan	In favor

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



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Maurice Pilette, P.E. Chairman

Dated: April 12, 2006

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT TO:** Theodore H. Beck, Springfield Turnverein, 907 Main Street, Agawam, Massachusetts 01001 **and 1<sup>st</sup> Class Mail, Postage Pre-paid to:** Fire Chief David A. Pisano and Inspector Michael R. Mercadante, Agawam Fire Department, 800 Main Street, Agawam, MA 01001.